

## CHAPTER 7.

### Portion of DBE Goal to be Met through Neutral Means

The Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goals using race- and gender-neutral measures.<sup>1</sup> Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. Agencies must determine whether they can meet their overall DBE goals solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, agencies must project the portion of their overall DBE goals that they expect to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

- If an agency determines that it can meet its overall DBE goal solely through race- and gender-neutral means, then it would propose using only neutral measures as part of its program. The agency would project that 100 percent of its overall DBE goal would be met through neutral means and that 0 percent would be met through race- and gender-conscious means.
- If an agency determines that a combination of race- and gender-neutral and race- and gender-conscious measures are needed to meet its overall DBE goal, then the agency would propose using a combination of neutral and conscious measures as part of its program. The agency would project that some percent of its overall DBE goal would be met through neutral means and that the remainder would be met through race- and gender-conscious means.

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.<sup>2</sup>
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.<sup>3</sup>
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 7-1.

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<sup>1</sup> 49 CFR Section 26.51.

<sup>2</sup> See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>.

<sup>3</sup> <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

Based on 49 CFR Part 26 and the resources above, general areas of questions that transportation agencies might ask related to making any projections include:

- A. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
- B. What has been the agency's past experience in meeting its overall DBE goal?
- C. What has DBE participation been when the agency did not use race- or gender-conscious measures?<sup>4</sup>
- D. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

Chapter 7 is organized around each of those general areas of questions. Results provided are preliminary as more information will be contained in the full 2015 Disparity Study.

#### **A. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?**

As discussed in Chapter 4, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence of that discrimination may have been a factor in these outcomes. It is important to note that some minority and female business owners interviewed did not think they had been affected by race or gender discrimination.

**Figure 7-1.**

#### **Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]**

You must also explain the basis for the State's race-neutral/race-conscious division and why it is the State's best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient's race-neutral/race-conscious division.

Appropriate information should give a sound analysis of the recipient's market, the race-neutral measures it employs and information on contracting in the recipient's contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient's contracts that do not have contract goals; past prime contractors' achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state's programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women's businesses participate in programs without goals.

Source:

FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year].  
[http://www.fhwa.dot.gov/civilrights/dbe\\_memo\\_a4.htm](http://www.fhwa.dot.gov/civilrights/dbe_memo_a4.htm).

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<sup>4</sup> USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

ADOT should review the information about marketplace conditions presented in Chapter 4 and Appendices E through H, as well as other information it may have, when considering the extent to which it can meet its overall DBE goal through neutral measures. Keen Independent will prepare a more comprehensive analysis of marketplace conditions in the 2015 Disparity Study.

## B. What has been the agency's past experience in meeting its overall DBE goal?

ADOT's reported certified DBE participation since it reinstituted DBE contract goals is summarized in Figure 7-2. As shown, reported DBE participation based on DBE commitments/awards on FHWA-funded contracts was within 1 to 2 percentage points of the goal for those years. DBE participation in the first six months of FFY 2014 exceeded the overall DBE goal of 7.76 percent.

ADOT also reported participation based on payments to DBEs. These data show participation of about 4 percent in FFY 2012 and FFY 2013 after DBE contract goals were reinstated on FHWA-funded contracts. ADOT fell short of overall DBE goals when measured based on payments.

Figure 7-2.

ADOT overall DBE goal and reported DBE participation on FHWA-funded contracts, FFY 2011 through first six months of FFY 2014

Federal fiscal year	DBE goal	DBE commitments/ awards	DBE payments	Difference from DBE goal	
				Awards	Payments
2011	8.00 %	6.40 %	0.18 %	-1.60 %	-7.82 %
2012	7.76	6.82	4.15	-0.94	-3.61
2013	7.76	7.25	4.37	-0.51	-3.39
1st half 2014	7.76	8.62	4.86	0.86	-2.90

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

Note that ADOT-reported DBE participation based on commitments/awards is higher during this time period than participation based on payments. The 2015 Disparity Study report will examine reasons behind the difference between the two sets of DBE participation figures.

### C. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?

Keen Independent examined two sources of information to assess race-neutral DBE participation:

- DBE participation on FHWA-funded contracts in the most recent three years in which ADOT did not apply DBE contract goals; and
- Race-neutral DBE participation on FHWA-funded contracts for the most recent years.

The discussion in the following two pages examines both sets of participation figures.

**DBE participation in recent years in which ADOT did not apply DBE contract goals.** ADOT did not apply race- or gender-conscious program elements from the beginning of 2006 until well into FFY 2011. For FFYs 2008, 2009 and 2010, the last three full fiscal years for which DBE contract goals were not applied, reported DBE utilization ranged from 1.21 percent to 2.08 percent based on DBE commitments/awards (median of 2.02 percent). ADOT reported DBE participation ranging from 0.87 to 4.30 percent for those fiscal years based on payments data (median of 4.19 percent), as reported in Figure 7-3.

Figure 7-3.  
DBE participation on FHWA-funded contracts for  
most recent three years when DBE contract goals  
did not apply (FFY 2008-FFY 2010)

Federal fiscal year	Commitments/ awards	Payments
2008	1.21 %	4.19 %
2009	2.02	4.30
2010	2.08	0.87

Source: ADOT Uniform Reports of DBE Awards/Commitments  
and Payments.

The 2015 Disparity Study will research the reasons behind the differences between ADOT-reported DBE participation based on commitments/awards and DBE participation based on payments.

**Race-neutral DBE participation in recent ADOT Uniform Reports.** Per USDOT instructions, ADOT counts as “neutral” participation any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

ADOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for the three most recent federal fiscal years indicate race-neutral participation of:

- 2.30 percent in FFY 2011;
- 2.81 percent in FFY 2012; and
- 4.23 percent in FFY 2013.

Figure 7-4 presents these results. The right-hand column of Figure 7-4 calculates the share of total participation achieved through neutral means (neutral DBE participation ÷ total DBE participation). In FFY 2013, ADOT achieved 58 percent of its total DBE commitments/awards through neutral means ( $4.23 \div 7.25 = 58\%$ ), higher than in FFY 2012 and lower than in FFY 2011. Therefore, the median of the three years is 58 percent.

Figure 7-4.

ADOT-reported race-neutral and race-conscious DBE participation on FHWA-funded contracts for FFY 2011, FFY2012 and FFY 2013

Federal fiscal year	DBE commitments/awards			Share achieved through neutral
	Total	Race- neutral	Race- conscious	
2011	3.45 %	2.30 %	1.15 %	67 %
2012	6.82	2.81	4.01	41
2013	7.25	4.23	3.02	58

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

In its report for the first six months of FFY 2014, ADOT showed race-neutral DBE participation of 3.93 percent (not reported in Figure 7-4 as it was not for a full year). Each of these figures is based on awards/commitments for those time periods.

Note that Keen Independent will have much more information about DBE utilization on different sets of ADOT contracts in the 2015 Disparity Study, including state-funded contracts, which have not had DBE contract goals. The Disparity Study will also provide information about utilization of minority- and women-owned firms, including firms not currently certified as DBEs.

#### **D. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?**

When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT must review the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or could consider for future implementation.

**ADOT initiatives.** ADOT currently has a broad range of neutral programs and initiatives to encourage participation of small businesses — including DBEs — in its transportation contracts. Examples include:

- Outreach events for minority- and women-owned businesses and other small businesses;
- Participation in procurement fairs and similar events throughout the state;
- Regular meetings with the construction and professional services industries;
- Joint meetings and training sessions with the Arizona Chapter of the Associated General Contractors of America (AGC) and with the American Council of Engineering Companies of Arizona (ACEC);
- A bi-monthly e-newsletter on DBE news and events, ADOT contract opportunities and other topics;
- Regular webinars and in-person training opportunities covering topics such as finance, bidding, marketing and operations; and
- One-on-one technical assistance for DBEs.

ADOT has operated a mentor-protégé program in past years and recently developed a Small Business Concern Program. It also informs DBEs and other firms of assistance opportunities through other organizations.

Figure 7-5 on the following page summarizes some of ADOT's neutral measures.

**Other agencies offering small business assistance.** There are many organizations throughout Arizona that offer assistance to minority- and women-owned firms and small businesses in general.

**Small business assistance organizations.** Examples of small business assistance organizations are provided below.

- There are 26 centers across the state in the Arizona Small Business Development Center Network. These centers provide business counseling, planning assistance, help concerning financing, classes and assistance bidding on government contracts.
- SCORE has offices in communities throughout Arizona where it offers mentoring, business counseling, and workshops on topics including the basics of starting a business, how to administer and manage a business, marketing and social media, and business related computer skills and tools.
- Serving businesses in Southern Arizona, the PPEP Microbusiness and Housing Development Corporation offers training on topics such as management, pricing, market analysis, financial statements, marketing and social media, budgeting, legal services, and long-term planning.

Figure 7-5.  
Examples of ADOT race-neutral efforts

Outreach recruitment and training events for minority- and women-owned businesses and other small businesses	Regular Task Force meetings with the construction and professional services industries
Annual DBE Conferences and Expos	One-on-one technical assistance for DBEs
For ADOT, local and federal government agency, university, and other projects, provide bidding opportunities on one webpage	DBE/SBC News website/blog featuring ADOT and statewide bidding, training, teaming and financing opportunities
Regular webinars and in-person training opportunities covering topics such as finance, bidding, marketing and operations (which is held in conjunction with AGC)	Joint meetings and training sessions with the Arizona Chapter of the Associated General Contractors of America (AGC) and with the American Council of Engineering Companies of Arizona (ACEC)
Providing construction plans and specifications to DBEs	Complaint process for investigating DBE fraud and abuse
Participation in procurement fairs and similar events throughout the state	Bi-weekly e-newsletters on DBE news and events, ADOT contract opportunities and other topics
Online Prompt Payment mechanism that requires prime constructors to pay subcontractors within 7 calendar days of being paid by ADOT and online mechanism for subcontractors to report to ADOT if they received timely payment	Training internal staff, consultants, constructors and local public agency staff on DBE recruitment, utilization and compliance
Enrollment in tri-level Business Development Program for new and emerging DBEs, Pacesetter (mid-level) and Master (advanced) level DBEs	Field compliance visits to ensure DBEs are performing a commercially useful function
Holds Summits and other “listening” events with DBEs and stakeholder groups	Targeted outreach at AZ annual Roads & Streets Conference and other procurement and networking events
Operate the AZ UTRACS web portal for online Bidder’s List/Vendor Registration, DBE certification and Annual Update, Small Business Concern Registration, DBE/SBC and Vendor Directories and online DBE compliance	Training at pre-bid, post award and pre-construction meetings
Offer DBE training and one-on-one consulting sessions on construction and engineering related issues	Email and outreach service for prime consultants and contractors looking for DBEs to work on their projects
Train prime consultants and contractors on Good Faith Efforts	“Bidding Boot Camp” training provided by AZ AGC

Some business development centers focus on minority-owned companies. Examples include:

- The Minority Business Development Center in Phoenix provides minority certification assistance, procurement training, bonding assistance, management and organization consulting, access to capital, and marketing, bidding and networking assistance through partnership with the U.S. Department of Commerce.
- The National Center for American Indian Enterprise Development (NCAIED) has a Procurement Technical Assistance Center in Window Rock. It offers training, planning assistance, mentoring and technical assistance regarding marketing to all levels of government and to prime contractors. (NCAIED’s national headquarters are in Mesa.)

**Small business lending.** Local banks and other private and not-for-profit organizations offer financing using U.S. Small Business Administration loan programs. For example, the Business Development Finance Corporation has locations in Phoenix and Tucson. Chicanos Por La Causa, Inc. in Phoenix offers small business financing (including SBA microloans of \$2,000 to \$5,000) and technical support. The PPEP Microbusiness and Housing Development Corporation provides loans between \$500 and \$75,000 to small business owners located in Southern Arizona. There are many other organizations throughout the state that assist minority- and women-owned firms and other small businesses that need training regarding financing or offer SBA loan programs.

**Chambers of commerce.** There are more than 70 chambers of commerce in the state, including minority and women's business organizations, that offer training and networking opportunities. There are membership organizations focusing on businesses owned by American Indians, Chinese Americans, Korean Americans, Philippine Americans, Hispanic Americans and African Americans.

**Trade associations and professional groups.** There are many trade associations and professional groups related to transportation-related construction and professional services in Arizona. Organizations such as the Arizona Chapter of the Associated General Contractors of America (AGC) serve a broad range of firms engaged in transportation construction and other heavy construction. The American Council of Engineering Companies of Arizona (ACEC) is one example of a trade association serving engineering companies in the state. There are associations of minority contractors with Arizona chapters (e.g., Associated Minority Contractors of America) and associations of women business owners with Arizona locations (e.g., National Association of Women Business Owners). There are also local organizations such as the Minority and Small Business Alliance of Southern Arizona.

These types of organizations offer a broad range of training, other technical assistance and networking opportunities to transportation-related construction and engineering companies in Arizona. Groups such as AGC and ACEC have partnered with ADOT to provide targeted training and networking opportunities to DBEs. The groups mentioned above are just examples of trade associations and professional groups in the state; there are many more.

**Small business incubators.** Business incubators offer workspace for emerging businesses but also training, mentoring, networking and financing assistance. Examples of business incubators in Arizona include:

- Arizona State University SkySong in Scottsdale;
- Gangplank Business Initiatives centers in Chandler and Avondale;
- The Northern Arizona Center for Entrepreneurship and Technology in Flagstaff; and
- The Opportunity through Entrepreneurship Foundation center in Phoenix.

**Bid notification resources.** There are many low-cost bid notification services available to Arizona businesses. Businesses can also learn of ADOT bid opportunities on its website and through ProcureAZ.



**Conclusions from analysis of neutral measures.** Preliminary review of current race- and gender-neutral initiatives shows considerable ADOT efforts alone and in partnership with others. In addition, public, not-for-profit and private institutions provide networking, training and technical assistance, financing and other small business services. This assistance outside of ADOT efforts is substantial.

It is difficult to project the combined effect of ADOT's neutral programs and those available through other organizations. However, it is reasonable to conclude that:

- Because these efforts are expanding, ADOT might anticipate that more of its DBE participation can come through neutral efforts in the future.
- Chapter 6 analyses indicated an overall goal in the range of 9.38 percent or higher. It is unlikely that ADOT will achieve an overall DBE goal in that range solely through neutral programs already in place or that can be implemented in the near-term. Many of the examples of neutral programs provided here were in effect in the years in which ADOT reported DBE participation in the range of less than 1 percent up to 4 percent (see Figure 7-3).

**Opportunity to increase reported DBE participation by increasing the number of ADOT contractors, consultants and suppliers that are DBE-certified.** ADOT can only count in its DBE reports participation of minority- and women-owned firms that are certified as DBEs.

- Keen Independent identified a large number of non-DBE-certified minority- and women-owned firms in the Arizona transportation contracting industry. Most of these firms appeared to be within the revenue limits for DBE certification (and therefore were counted as potential DBEs in the base figure analysis).
- Some of these businesses may be working on ADOT's FHWA-funded contracts.
- Therefore, one "neutral" measure for increasing reported DBE participation is for ADOT to encourage more of those firms to apply for DBE certification. The 2015 Disparity Study will quantify this potential increase and more fully explore any barriers to certification.

ADOT should consider this factor as well when projecting the portion of the overall DBE goal for FHWA-funded contracts to be met through neutral means.

## **Summary**

Chapter 7 provides guidance to ADOT as it projects the portion of its overall DBE goal to be achieved through neutral means.

### **Should ADOT project that it can meet all of its overall DBE goal through neutral means?**

ADOT will first need to consider whether it can achieve 100 percent of its overall DBE goal through neutral means. Such a determination depends in part on the level of the overall DBE goal. If its overall DBE goal is in the range of 9.38 percent or higher, the evidence presented in this report indicates that ADOT might not meet its DBE goal solely through neutral means.

ADOT should consider all of the information in the report when reaching its decision on any use of race- and gender-conscious programs (such as DBE contract goals) in addition to neutral efforts, including that summarized below:

- A. There is preliminary information indicating disparities in outcomes for minorities and women and some qualitative evidence of discrimination within the local transportation contracting marketplace, as summarized in Chapter 4. (The 2015 Disparity Study will have more comprehensive information.)
- B. ADOT's past experience is that DBE participation has been close to its overall DBE goal of 7.76 percent when DBE contract goals were in place (see Part B of Chapter 7).
- C. Median annual DBE participation for the last three full federal fiscal years in which ADOT operated a 100 percent neutral program was 2.02 percent based on awards/commitments and 4.19 percent based on payments. This level of participation is considerably below an overall DBE goal in the range of 9.38 percent.

Since ADOT has set DBE contract goals on FHWA-funded contracts for the full federal fiscal year, its reported race-neutral participation has been 2.81 percent (FFY 2012), 4.23 percent (FFY 2013) and 3.93 percent (first six months of FFY 2014). Each of these figures for race-neutral participation is well below a future overall DBE goal in the range of 9.38 percent or higher. (Part C of Chapter 7 discusses these results.)

- D. ADOT has extensive neutral measures in place and there are many small business assistance programs offered by other institutions throughout the state. Any additional measures ADOT might be able to immediately institute would probably have only a small impact in comparison with what already exists. It is unlikely that ADOT could increase its neutral participation of DBEs to reach an overall DBE goal in the range of 9.38 percent solely through additional neutral measures. (See Part D of Chapter 7.)

**If ADOT uses a combination of neutral means and DBE contract goals, how much of the overall DBE goal can ADOT project to be met through neutral means?** ADOT's overall DBE goal for FHWA-funded contracts for FFY 2011 through FFY 2013 included a projection that 2.68 percentage points of the overall goal be met through neutral means. The information in this Availability Study supports a higher projection of DBE participation achieved through neutral measures.

For the following reasons, ADOT might consider a race-neutral projection of more than 4 percentage points for its overall DBE goal for FFY 2015 through FFY 2017:

- Median DBE participation was 4.19 percent for the three most recent federal fiscal years in which ADOT operated a 100 percent neutral program (from ADOT reports to FHWA using payments data as discussed on page 5 of this chapter).
- The race-neutral portion of ADOT's DBE participation was about 4 percent (based on ADOT's reports for FFY 2013 and the first six months of FFY 2014 as examined on page 5 of this chapter).

- ADOT neutral initiatives are expanding, including those in partnership with other organizations.
- As explained previously in this chapter, ADOT might do more to encourage minority- and women-owned firms to become DBE-certified. Some of those firms may be working on ADOT's FHWA-funded contracts and could then be counted towards ADOT's total DBE participation. (This participation will be examined in the 2015 Disparity Study.)
- In FY 2013, ADOT reported race-neutral achievement equal to 58 percent of its total DBE commitments/awards for that year. The 58 percent figure represents the median neutral share of total achievement in the most recent complete fiscal years. Multiplying an overall DBE goal of 9.38 percent by 58 percent yields a projection of future neutral participation of 5.44 percent.

ADOT projected a 2.68 percent point neutral and 5.08 percentage point race-conscious split when it prepared its overall DBE goal of 7.76 percent for FFY2012 through FFY 2014. The first column Figure 7-6 presents these past projections. Note that ADOT's achievement differed from its overall DBE goal and its projections of neutral and race-conscious projections.

The second column of numbers in Figure 7-6 is an example of projections using an overall DBE goal of 9.38 percent and a 5.44 percentage point projection for race-neutral for FFY 2015 through FFY 2017. The race-conscious portion of the goal is 3.94 percentage points ( $9.38\% - 5.44\% = 3.94\%$ ).

As shown, a 3.94 percentage point projection of DBE participation through race-conscious measures is below the 5.08 percentage point race-conscious projection for the past three federal fiscal years.

**Figure 7-6.**  
Current ADOT overall DBE goal and projections of race-neutral for FHWA-funded contracts and example of FFY 2015 through FFY 2017 overall goal and projections

Component of overall DBE goal	Current FFY 2012- FFY 2014	Example FFY 2015- FFY 2017
Overall goal	7.76 %	9.38 %
Neutral projection	2.68	5.44
Race-conscious portion	5.08	3.94

**Potential revisions upon completion of the 2015 Disparity Study.** The information presented in the Availability Study should be considered preliminary. Only portions of the analyses in the 2015 Disparity Study had been conducted at the time of the Availability Study report, and they may be refined or expanded in the full 2015 Disparity Study. ADOT should review the results of the full Disparity Study upon its completion and, if warranted, refine its overall DBE goal and projection of what can be achieved through race-neutral means.